REPORT DOCUMENTATION PAGE

Form Approved
OMB No. 0704-0188

1. REPORT DATE *(DD-MM-YYYY)*	2. REPORT TYPE	3. DATES COVERED *(From - To)*
09-02-2004	FINAL	

4. TITLE AND SUBTITLE

Keeping the Routine, Routine: The Operational Risks of Challenging Chinese Excessive Maritime Claims

5a. CONTRACT NUMBER

5b. GRANT NUMBER

5c. PROGRAM ELEMENT NUMBER

6. AUTHOR(S)

LT Andrew J. Thomson, USN

Paper Advisor (if Any): CDR Burton Waltman, JAGC, USN

5d. PROJECT NUMBER

5e. TASK NUMBER

5f. WORK UNIT NUMBER

7. PERFORMING ORGANIZATION NAME(S) AND ADDRESS(ES)

Joint Military Operations Department
Naval War College
686 Cushing Road
Newport, RI 02841-1207

8. PERFORMING ORGANIZATION REPORT NUMBER

9. SPONSORING/MONITORING AGENCY NAME(S) AND ADDRESS(ES)

10. SPONSOR/MONITOR'S ACRONYM(S)

11. SPONSOR/MONITOR'S REPORT NUMBER(S)

12. DISTRIBUTION / AVAILABILITY STATEMENT

Distribution Statement A: Approved for public release; Distribution is unlimited.

13. SUPPLEMENTARY NOTES A paper submitted to the faculty of the NWC in partial satisfaction of the requirements of the JMO Department. The contents of this paper reflect my own personal views and are not necessarily endorsed by the NWC or the Department of the Navy.

14. ABSTRACT

The United States asserts that China claims rights, territory, and airspace that are not in harmony with the world interpretation of the United Nations Convention on the Law of the Sea (UNCLOS). When challenging these claims or conducting operations in disputed waters, the Combatant Commander must account for the increased risk these operations carry and develop a process to work through or mitigate that risk because conducting these operations is not simply about the proper interpretation and application of the Law of the Sea, but is fundamentally about national security and national policy.

15. SUBJECT TERMS

UNCLOS, Excessive Maritime Claims, China, Combatant Commander, Operational Risk

16. SECURITY CLASSIFICATION OF:			17. LIMITATION OF ABSTRACT	18. NUMBER OF PAGES	19a. NAME OF RESPONSIBLE PERSON
a. REPORT	b. ABSTRACT	c. THIS PAGE			Chairman, JMO Dept
UNCLASSIFIED	UNCLASSIFIED	UNCLASSIFIED		22	19b. TELEPHONE NUMBER *(include area code)* 401-841-3556

Standard Form 298 (Rev. 8-98)

NAVAL WAR COLLEGE
Newport, R.I.

Keeping the Routine, Routine:
The Operational Risks of Challenging Chinese Excessive Maritime Claims

By

Andrew J. Thomson
Lieutenant, United States Navy

A paper submitted to the Faculty of the Naval War College in partial satisfaction of the requirements of the Department of Joint Military Operations.

The contents of this paper reflect my own personal views and are not necessarily endorsed by the Naval War College or the Department of the Navy.

Signature: _____
09 February 2003

Keeping the Routine, Routine:
The Operational Risks of Challenging Chinese Excessive Maritime Claims

"Is China as it becomes more influential and more powerful going to follow the rules that we've all agreed to, or is it going to try to define new rules in the areas right around China where its military power can come to bear?" ADM Dennis Blair, USN[1]

Introduction

On April 1, 2001, a United States Navy EP-3E Aries II surveillance plane and a People's Liberation Army F-8 jet collided over the South China Sea. In the aftermath of the collision, the EP-3E conducted an emergency landing at a military airfield on the Chinese island of Hainan. The Chinese pilot was killed.[2] In the days and weeks following the mishap both governments bombarded each other with rhetoric gilded in the language of international law in order that each nation could reasonably place the blame for the accident squarely on the shoulders of the other. In the immediate aftermath of the accident, United States Secretary of Defense Rumsfeld cancelled all Chinese and American military to military contacts and the Chinese reciprocated by canceling all U.S. Naval port visits to China for nearly a year and half.[3]

Within the larger context of debates between States about international law, the EP-3E incident represented a conflict between two global powers about the rights of maritime states versus the rights of coastal states. Fundamentally, the United States asserts that China claims rights, territory, and airspace that are not in harmony with the world interpretation of the United Nations Convention on the Law of the Sea (UNCLOS). Furthermore, both nations possess the military, diplomatic, and informational capability and will to enforce their position on the Law of the Sea. This situation drastically increases the likelihood of accident or confrontation as both countries assert and defend their positions. This delicate situation

places every operation considered and conducted in disputed areas, at risk of escalating from a routine operation into an international incident.

Thesis

The impact of these differing interpretations of the Law of the Sea is broad. These opinions support and enhance national policy objectives. At its core, international law is one conduit through which nations assert their interests. Furthermore, the law is the foundation on which the international community bases and measures the conduct of the United States and other military powers. To that end, the United States interprets international law in a manner that supports its national interests. These interests are best served by a legal environment where its military forces operate freely through and over as much of the world's seas and airspace as it can, because those freedoms enhance the nation's capability to project power throughout the globe. China, however, crafts its opinions on the Law of the Sea to maximize its national security by attempting to restrict the space in which the navies and air forces of the world may operate. To that end, the presence of Chinese excessive maritime claims and the United States' attempts to roll back these claims, reflects not only legal interpretations but are also statements of national policy and objectives. Therefore, when challenging these claims or conducting operations in disputed waters, the Combatant Commander must account for the increased risk these operations carry and develop a process to work through or mitigate that risk because conducting these operations is not simply about the proper interpretation and application of the Law of the Sea, but is fundamentally about national security and national policy.

Differing Views – The United States, the People's Republic of China and the United Nations Convention on the Law of the Sea (UNCLOS)

1982 United Nations Convention on the Law of the Sea (UNCLOS), covers numerous aspects of the conduct of nations in the maritime environment.[4] Over the course of ten years, 148 states, 10 United Nations agencies, 10 intergovernmental organizations, and 33 non-governmental organizations came together to draft and develop the single largest codification, restatement, and development of international law then or since.[5] Comprising 320 separate articles and 9 annexes, UNCLOS covers a broad array of maritime subjects including the legal status of the territorial sea, the development of the regimes of transit passage, the creation and development of the concept of the Exclusive Economic Zone, the management and conservation of the high seas, a protocol on deep sea-bed mining, and a formal dispute resolution mechanism.[6] UNCLOS is a carefully written document that codified customary international law, created new regimes in international law, and established new norms in the development and creation of multilateral and international treaty agreements.[7] In the twenty-two years since the treaty opened for signature and ratification, 157 nations became signatories to the treaty and 145 are now parties to it.[8]

Although a key and vocal member of the body drafting the treaty, the United States neither signed nor ratified the 1982 Convention due to reservations to portions of the treaty regarding deep sea-bed mining.[9] Although not a party to the treaty, the United States adhered to the navigation and over-flight provisions of the treaty as they "codified existing law and practice and reflected customary and international law."[10] In 1994, however, President Clinton submitted UNCLOS and a supplementary agreement reforming the deep seabed

mining provisions to the United States Senate for its advice and consent.[11] Although the Senate has yet to act on the Treaty, the United States has and will continue to use UNCLOS as the primary source of law for its maritime and airspace operations.[12]

Unlike the United States, the Government of the People's Republic of China (PRC) is a party to the treaty, ratifying it in June 1996. China's ratification of the treaty, however, only served to bring into sharp relief the differences in interpretation and practice under the Law of the Sea between the two nations.

There are five major points of the Law of the Sea in which the United States and China differ in interpretation and application. These areas include the right of military vessels to innocent passage in the territorial seas of the coastal state, the rights of high seas freedoms for military vessels in the maritime state's Exclusive Economic Zone (EEZ), the definition and establishment of baseline determinations, the establishment of security zones outside the maritime nation's territorial seas, and the differences between maritime scientific research and military surveys.[13]

Dating back to its 1958 Declaration on the Territorial Sea until present day, China maintains the right to restrict the authority of foreign naval vessels to enter its territorial seas. In the 1958 declaration the Chinese government stated, "No foreign vessels for military use and no foreign aircraft may enter China's territorial sea and the air space above it without the permission of the Government of the People's Republic of China."[14] In two separate pieces of domestic legislation: the Maritime Traffic Safety Law of the People's Republic of China,[15] and the Law on the Territorial Sea and Contiguous Zone,[16] the Chinese restated and reaffirmed their requirement on foreign military vessels to obtain the permission of the

government prior to entry into its territorial seas. The Chinese position, however, is at odds with the Convention and U.S. interpretation of UNCLOS. Although UNCLOS places restrictions on ships exercising their right of transit passage, the treaty does not place any requirement for military vessels to obtain permission to enter the territorial seas of the coastal state.[17] The United States, therefore, does not recognize China's prior notification requirement.

The Chinese and U.S. governments also disagree about the rights of warships to operate within a nation's Exclusive Economic Zone (EEZ). UNCLOS grants the coastal state the right to establish an EEZ that "shall not extend beyond 200 nautical miles from the baselines from which the breadth of the territorial sea extends."[18] Within the EEZ, the Convention allows all States to enjoy the rights of over flight and navigation limited only by their exercise of due regard for the economic rights of the coastal states.[19] In their declaration upon ratification, however, the Chinese stated that they enjoyed "sovereign rights and jurisdiction"[20] over its EEZ. By omitting any reference to its economic rights within the EEZ, China appears to take a broad view of its rights to control military activity within its EEZ.[21] Furthermore the Chinese government also seeks to limit the rights of warships and aircraft to operate within its EEZ by claiming that the mere presence of the military vessel violates the "due regard" elements of the Convention by posing threats to Chinese national security.[22]

The United States position on the rights of military vessels and aircraft to operate in the EEZ is certainly more tolerant and explicit. In his 1983 Ocean Policy Statement, President Reagan stated that: "All nations will continue to enjoy the high seas rights and

freedoms that are not resource related, including the freedoms of navigation and over flight."[23] The economic nature of the EEZ and the associated high-seas freedoms are further noted in *The Commander's Handbook on the Law of Naval Operations,* when it advises that, "the existence of an exclusive economic zone in an area of naval operations need not, of itself, be of operational concern to the naval commander."[24] These fundamental differences in interpretation of the Law of Sea regarding the rights of military vessels and aircraft was a contributing factor in the EP-3E incident and can be a continued source of disagreement between the United States and China should the Chinese continue to enforce their interpretation of their rights under UNCLOS.

UNCLOS also allows the coastal state to establish a 24 nautical mile contiguous zone. The Convention describes the contiguous zone as a region where the coastal state may exercise jurisdictional control in order to "prevent infringement of its customs, fiscal, immigration or sanitary laws and regulations within its territory or territorial sea."[25] In its 1992 Law of the People's Republic of China on the Territorial Sea and the Contiguous Zone, the Chinese declared that they have “the right to exercise control in the contiguous zone to prevent and impose penalties for activities infringing the laws or regulations concerning security, the customs, finance, sanitation or entry and exit control."[26] Although the Chinese domestic legislation mirrors the Convention in authorizing the right to control customs, fiscal, and sanitary regulations, the addition of the right to exert national control over the security of the contiguous zone places the Chinese at odds with the United States. The *Commander's Handbook* states that coastal nations do not posses the right "to establish zones that would restrict the exercise of non-resource-related high seas freedoms beyond the

territorial seas."[27] Fundamentally, the United States views that an attempt by the Chinese to expand their sovereign control over the Contiguous Zone unfairly restricts the United States' right to freedom of navigation and over flight in the high seas.[28]

Another area where the United States and China differ is on the establishment of the baselines on which all the maritime regimes are defined. The Convention allows the coastal state to determine its baselines in one of three methods: the low-water line, straight baselines, and archipelagic baselines.[29] For coastal states such as China and the United States, UNCLOS declares, "the normal baseline for measuring the breadth of the territorial sea is the low-water line along the Coast."[30] UNCLOS allows a coastal state to apply straight baselines to measure the extent of their territorial seas under certain circumstances. These circumstances include: where the coastline is deeply indented and cut into, or if there is a fringe of islands along the coast in its immediate vicinity.[31] China, in its 1996 Declaration of the Government of the People's Republic of China on the Baseline of the Territorial Sea, declared straight baselines and promulgated their geographic positions.[32] Although the Chinese first claimed straight baselines in the 1958 Declaration on the Territorial Sea and again in the 1992 Law of the People's Republic of China on the Territorial Sea and the Contiguous Zone, the 1996 Declaration was the first time that the Chinese actually specified the geographic coordinates of its straight baseline claims. An analysis of China's baseline claims by the U.S. State Department's Office of Ocean Affairs finds that, "much of China's coastline does not meet either of the two LOS Convention geographic conditions required for applying straight baselines."[33] In some areas, the misapplication of the straight baselines allows the Chinese government to excessively claim nearly 2000 square nautical miles as

territorial seas that should be regarded as high seas if the baselines were properly drawn.[34] The consequence of these straight baseline claims is clear. These straight baselines extend China's territorial, jurisdictional, legal, and economic authorities into the high seas beyond where the Convention intended.

Lastly, the Government of the People's Republic of China and the United States disagree on the differences between military surveys and marine scientific research (MSR). UNCLOS affirms the right of all States and other international organizations to conduct MSR. At the same time, however, it grants to coastal states the right and authority to control, and conduct MSR in its territorial seas and its EEZ.[35] The Convention, however, distinguishes between MSR and "hydrographic surveys" and "survey activities." UNCLOS clearly associates hydrographic surveys and other survey activities with those commonly performed by warships, thus granting them the same privilege as other activities commonly associated with warships such as launching and recovering aircraft.[36] In its 1996 Regulations Regarding Management of Marine Scientific Research (MSR) Involving Foreign Vessels, the Chinese Government, however, "appears not to distinguish between MSR and military surveys."[37] Furthermore, the People's Republic of China enacted domestic legislation in early 2003 that further amplified their attempts to restrict the rights of maritime nations to conduct military surveys in its EEZ.[38]

The difference between military surveys and MSR has recently been a source of disagreement between the United States and China. On March 23, 2001, as a Chinese warship forced a U.S. Navy survey ship, the USNS Bowdich, to depart the Chinese EEZ on March 23, 2001, claiming that survey ship violated Chinese Law.[39] The United States

responded by claiming that the USNS Bowdich was conducting "hydrographic acoustic performance data"[40] and that its activities were consistent with its rights under international law.

The Mechanics of Challenging Excessive Maritime Claims

The United States applies a three-pronged approach to combating excessive maritime claims, such as those made by the People's Republic of China. Generally speaking the United States response to an excessive maritime claim consists of diplomatic protest, operational assertions conducted as part of the Freedom of Navigation program and bi- or multi-lateral talks and military to military discussions focused on harmonizing views on the Law of the Sea between the United States and the excessive claimant. In this regard, the United States' responses to the excessive maritime claims made by the People's Republic of China have been consistent with national policy in these matters. As such, the United States protested these Chinese excessive claims in 1992 and 1996 and conducted operational assertions in 1986, 1991, 1992, 1996, and 1997.[41]

In addition to programs actively designed to ensure that Chinese excessive maritime claims do not mature into customary international law, the United States continues to conduct routine operations in China's EEZ. Although the EP-3E and Bowdich incidents involved naval ships and aircraft conducting routine operations, their routine surveillance and survey tasks did complement American legal positions on the rights of these vessels to conduct routine operations according to their high seas freedoms under both customary international law and the Law of the Sea.

In addition to filing diplomatic protests, conducting operational assertions and continuing to conduct routine operations in China's EEZ, the United States also embarked on a bi-lateral approach to working with the People's Republic to resolve the aforementioned differences in interpretation and application of the Law of the Sea. In 1998, the United States and China signed the bi-lateral Military Maritime Consultative Agreement (MMCA) to establish "a stable channel for consultations" between the two nations in order to "promote common understanding regarding activities undertaken by their respective maritime and air forces when operating in accordance with international law including the principles and regimes reflected in the United Nations Convention on the Law of the Sea."[42] Since the EP-3E incident the two governments have used the forum to discuss some of the issues and differences raised by the incident. Such issues discussed included military activities in the EEZ, including surveillance and military surveys, the right to distress entry and communications between the two country's military forces.[43]

The Stated Causes and the True Causes

A closer look at the core issues displayed by the Chinese Government's excessive maritime claims and their response to the routine military operations in the EP-3E and Bowdich incidents reveals a common theme: the Government of the People's Republic of China is deeply concerned with its territorial sovereignty and its security. By placing undue restrictions on the rights of warships to operate in its EEZ, by requiring warships to request permission to enter its territorial seas prior to conducting transits under the regime of innocent passage, by striving to extend sovereign security over the Contiguous Zone, and by unnaturally using straight baselines to determine the limit of its territorial seas, the

Government of the People's Republic of China guilds itself in the rhetoric of international law to callously aggrandize its own security perimeter. By misapplying international law, the Chinese seek to expand their own maritime power in the Pacific through rhetoric compensating for the relative weakness of its navy.[44] The application of the Law of the Sea, therefore, becomes a matter of state politics and less a matter of the legitimacy of state practices.

Similarly, it is in the United States' interest to ensure that as much of the world's airspace and seas are open to its warships and aircraft. The ability to harness and apply its massive power projection capability is directly related to the United States ability to freely move its military forces around the world. The expansive, security driven nature of the Chinese maritime claims are thus an attempt to limit the ability and capability of the United States and other maritime nations to freely operate in waters that the Chinese feel are vital to their national interest but lack the capability to defend through conventional means.

These underlying political differences in the application and understanding of the Law of the Sea are fraught with risks for the Commander, Pacific Command. The inherent political differences between the United States and China, combined with China's global strategic power, automatically raises the risks of confrontation between the two nations when their fundamental interests collide. First and foremost, the mere act of conducting an operational assertion can be perceived by the Chinese as an aggressive act. By operating a ship or an aircraft within a disputed region or operating it in a manner that is at odds with the Chinese claims, the Commander, Pacific Command openly states that the United States thinks that the Chinese are wrong in their views and interpretations of international law, and

furthermore, there is little that the Chinese can do about it. Given the sensitivity on the part of the Chinese to their territorial security, this option carries the possibility of substantially increasing the costs and risks associated with the operational assertion. These risks further accumulate as the Chinese develop their military capability and enhance their ability to operate further out to sea and seek to challenge the presence of the United States warship or vessel operating in a disputed area.

Although the EP-3E and Bowtich incidents occurred as American vessels were conducting routine military operations instead of explicit operational assertions, the two incidents demonstrate intent on the part of the Chinese to militarily enforce their maritime claims. Chinese intent to enforce their excessive claims adds significantly to the risk associated with enforcing American maritime claims or to operate in disputed areas in accordance with American interpretation of international law.

Furthermore, the political impact of aggressively contesting Chinese excessive maritime claims can extend beyond the scope of the Combatant Commander. Fighting the Global War on Terrorism and managing the nuclear crisis in North Korea requires that the United States and China cooperate in an amicable manner such that these crises may be resolved. In the aftermath of the EP-3E incident, the United States and China underwent a pause in their strategic and theater-strategic dialogue.[45] In order to achieve national objectives in both the Global War on Terrorism and the situation in North Korea, neither the United States nor China can afford another political freeze because of operational an assertion or routine operations that escalated into a political and legal conflict between the two states.

During these periods when the political ramifications have the overwhelming potential to overshadow the operational considerations of challenging the excessive maritime claims, the United States must rely on the remaining elements of national power to combat the excessive Chinese maritime claims. Although the Department of State must continue to regularly file diplomatic protests with the government of the People's Republic of China over its excessive maritime claims, the bi-lateral talks between the two nations as part of the MMCA hold the most promise to reconcile the differing views on the Law of the Sea. Through the processes established in the MMCA the United States and China may hope to reconcile their differences in interpretation on the Law of the Sea.

The agreed topics for discussion at the MMCA raised by the EP-3E incident form an excellent basis for further discussions between the United States and China. In the end, however, these discussions need to address the fundamental issue in the differences in interpretation and application of the Law the Sea between the two states: security. Representatives of the United States must advance the idea to the Chinese that their excessive claims will, in the future, unnecessarily hamper any desires on the part of the Chinese to expand the capability and freedom of action of their armed forces throughout the Pacific. By seeking to limit the ability of the United States and other Pacific nations to freely operate their naval and air forces in accordance with the Convention on the Law of the Sea by needlessly seeking to expand Chinese sovereignty over the Western Pacific, the government of the People's Republic of China may be setting a precedent that that their armed services do not really desire in the long term. These limitations on the rights of warships to exercise their high seas freedoms in the EEZ and to exercise their rights of transit passage may, one day,

needlessly limit the Chinese People's Liberation Army Navy from operating as it desires to further Chinese national objectives.

Recommendations

In order to ensure that Chinese excessive maritime claims do not mature into customary international law and that they do not pose a threat to U.S. military operations in the Western Pacific and South China Sea, the Commander, Pacific Command, must commit the forces and the resources to the following four tools to continue to effectively challenge these claims: the Freedom of Navigation Program (FON), the Military Maritime Consultative Agreement (MMCA), continued routine military operations, and Flexible Deterrent Options (FDO) designed to respond Chinese attempts to enforce or expand their maritime claims.

Keeping the FON program active is a vital component of any strategy implemented by Pacific Command to ensure that excessive Chinese maritime claims do not become elements of international law. The FON program carefully and completely links diplomatic activities conducted by the Department of State with operational activities conducted by the Department of Defense. Regular operational assertions, however, can be seen as an overly aggressive act by the Chinese and the political climate must be considered when deciding to conduct such an operation.

Continuing and expanding the scope of the MMCA serves as an excellent avenue within Pacific Command to contest Chinese maritime claims. Expanding the scope of the bi-lateral talks within the MMCA framework to address Chinese maritime claims in addition to the issues raised by the EP-3E incident can reinforce the military and diplomatic efforts undertaken as part of the FON program. Furthermore, these talks, conducted on a military-

to-military basis, the lack aggressiveness of operational assertions, thus proving a less likely source of conflict and accident between the two states.

The political limitations placed on operational assertions should not, however, limit Pacific Command's ability to conduct routine operations in its theater. Conducting routine transits of the Chinese EEZ, military surveys and surveillance operations serves the Commander, Pacific Command in two ways. It allows Pacific Command to operate its forces as required in a manner consistent with international law, but it also ensures that those activities remain part of the rights of military vessels when operating in the high seas. Routine operations, conducted in accordance with UNCLOS cannot be deterred by the threat of an excessive maritime claim.

Lastly, the Commander, Pacific Command must develop a series of scalable Flexible Deterrent Options designed to preempt, defuse, or deter a Chinese attempt to expand or enforce its excessive maritime claims. These FDOs would, in all likelihood, resemble elements of the FON program, but they would be standing, approved plans that the Commander, Pacific Command would have the freedom to initiate as an early response to aggressive Chinese claims enforcement. Elements of these FDOs could include: additional operational assertions, increased tempo of routine operations, deploying or stationing additional forces in contested waters and increased diplomatic protests and dialogue. Commander, Pacific Command would most likely use these FDOs as a response to Chinese military activities designed to enforce their excessive maritime claims. Although the development of international law is a slow process, the ability to respond to a threat to the United States' ability to freely operate its military forces sometimes requires a swift response.

Conclusion

The impact of Chinese excessive maritime claims on the freedom of action of the armed forces of the United States is severe. The negative impact on military operations is felt from the tactical to the strategic level. At the tactical level of operations, the United States is less able to conduct routine military operations such as transit passage, surveillance operations, and military surveys because of concerns about Chinese reaction to the activity. Any limitations on the Combatant Commander to conduct routine operations at the tactical level ensures that any military action or operation contemplated assumes a level of risk associated with a theater or national level objective when the actual intent and prosecution of the mission would normally engender a smaller element of risk.

Given the sensitive nature of the relationship between the United States and China, the United States finds itself in a position where it must balance between its political needs and its long standing concerns for the rights of maritime nations under the Law of the Sea. The political demands of the Global War on Terrorism and the nuclear crisis on the Korean peninsula requires that China and the United States work together in an open and harmonious manner. These requirements may, at times, seem at odds with any efforts by Pacific Command to continue to aggressively challenge Chinese excessive maritime claims. Nevertheless, Pacific Command must continue to use and adapt its available resources to continue to operate in a manner consistent with the Law of the Sea and with the national interest of ensuring that Chinese maritime claims do not inhibit or restrict current and future military operations in the Western Pacific.

ENDNOTES

[1] ADM Dennis Blair, USN, “Media Roundtable Transcript, Singapore, 18 May 2001,” http://131.84.1.218/speeches/sst2001/010518blairsingapore.htm [14 Jan 2004].

[2] United States Pacific Command, "News Release #012-01," (31 Mar 2001) <http://www.pacom.mil/news/news2001/rel012-01.htm> [14 Jan 2004].

[3] John J. Lumpkin, "U.S. Reports Some Progress With China," Associated Press, 17 January 2004, <http://story.news.yahoo.com/news?tmpl=story&u=/ap/20040117/ap_on_re_as/us_china_military_1%20> [19 January 2004].

[4] CAPT George Galdorisi, USN (ret), and CDR Alan G. Kaufman, JAGC, USN. “Military Activities in the Exclusive Economic Zone: Preventing Uncertainty and Defusing Conflict,” *California Western International Law Journal*, No. 253, Vol. 32, (Spring 2002), 2.

[5] Galdorisi and Kauffman, 2.

[6] United Nations Conference on the Law of the Sea, 3d. United Nations Convention of the Law of the Sea, A/CONF. 62/122 (n.p.: 1982) 1-4. (hereinafter UNCLOS)

[7] Galdorisi and Kauffman, 2.

[8] United Nations, "Multi-lateral Treaties Deposited with the Secretary General," <http://untreaty.un.org/ENGLISH/bible/englishinternetbible/partI/chapterXXI/treaty6.asp>.

[9] Ronald Regan, "President's Ocean Policy Statement, 10 March 1983," reprinted in George V. Galdorisi and Kevin R. Vienna, *Beyond the Law of the Sea*, (Westport: Prager, 1997), 187.

[10] Department of the Navy, "The Commander's Handbook on the Law of Naval Operations," Naval Warfare Publication 1-14M, (1995), 1-1. (hereinafter "Commander's Handbook")

[11] Commander's Handbook, 1-1.

[12] Commander John Astley, III, USCG, and Lieutenant Colonel Michael N. Schmidt, USAF, "The Law of the Sea and Naval Operations," *The Air Force Law Review*, Vol 42, No. 119 (1997), 2.

[13] Department of Defense, “Maritime Claims Reference Manual,” DODINST 2005.1M <http://www.dtic.mil/whs/directives/corres/20051m_040201/chinafinal.doc> [14Dec2003],

106-107. (hereinafer MCRM). The Maritime Claims Reference Manual is the DOD's comprehensive listing of all existing national maritime claims, a brief analysis of those claims, and the United States views on these claims. When combined with the Limits in the Seas series of publications by the Department of State, one sees the entirety of U.S. government's views on other nations' maritime claims. The best source on American military interpretations on the Law of the Sea, however, is "The Commander's Handbook on the Law of Naval Operations," published jointly by the U.S. Navy, U.S. Marine Corps, and the U.S. Coast Guard.

[14] People's Republic of China, "Declaration of China's Territorial Sea, 4 September 1958," reprinted in Jeanette Greenfield, *China's Practice in the Law of the Sea*, (Oxford: Clarendon Press, 1992), 229. See also MCRM, 109.

[15] People's Republic of China, "Maritime Traffic Safety Law of the People's Republic of China," reprinted in Jeanette Greenfield, *China's Practice in the Law of the Sea*, (Oxford: Clarendon, Press, 1992) 265. See also MCRM, 109.

[16] MCRM, 108.

[17] UNCLOS, Section III, Subsection A; *The Commander's Handbook on the Law of Naval Operations*, 2-2; Astley and Schmitt, 6; and J. Ashley Roach, and Robert W. Smith, *United States Responses to Excessive Maritime Claims*, (The Hague: Martinus Nijhoff Publishers, 1996), 260-261.

[18] UNCLOS, Article 58.

[19] UNCLOS, Articles 58 and 87.

[20] People's Republic of China, "Declaration upon Ratification," <http://www.un.org/Depts/los/convention_agreements/convention_declarations.htm#China%20Upon%20ratification>, [19Jan04].

[21] Margaret K. Lewis, "An Analysis of State Responsibility for the Chinese-American Airplane Collision Incident" *New York University Law Review*, Vol 77, No, 1404, (November, 2002), 4; and Galdorisi and Kauffman, 16.

[22] Lewis, 4; and Galdorisi and Kauffman, 16.

[23] Regan, 188.

[24] *Commander's Handbook*, 2-6.

[25] UNCLOS, Article 33.

[26] MCRM, 109.

[27] *Commander's Handbook*, 1-6.

[28] Roach and Smith, 166-167.

[29] UNCLOS, Articles 5, 7, and 47.

[30] UNCLOS, Article 5.

[31] UNCLOS, Article 7.

[32] MCRM, 110; and Department of State, Publication 112, *Limits in the Seas: United States Responses to Excessive Maritime Claims*, (Washington D.C.: Department of State, Bureau of Oceans and International Environmental and Scientific Affairs), 1992, 1.

[33] Publication 117, 3.

[34] Publication 117, 6.

[35] Roach and Smith, 431-432.

[36] Roach and Smith, 446-448.

[37] MCRM, 107.

[38] Bill Gertz, "China Enacting Laws Extending its Control," *The Washington Times*, 27 January 2003, pg 1.

[39] Galdorisi and Kauffman, 16; and Gertz, 1.

[40] Mark Oliva, "Before EP-3, China Turned Away U.S. Research Ship in International Waters" *Stars and Stripes*, 20 May 2001, <http://ww2.pstripes.osd.mil/01/may01/ed052001d.html> [6 Feb 2004].

[41] MCRM, 106, 107; Roach and Smith, xx; and Publication 112, 2-4.

[42] Agreement Between the Department of Defense of the United States of America and the Ministry of National Defense of the People's Republic of China on Establishing a Consultation Mechanism to Strengthen Military Maritime Safety, 19 January 1998, (hereinafter MMCA), http://www.fas.org/nuke/control/sea/text/us-china.pdf > [12 January 2004], preamble.

[43] Commander Stuart Belt, JACG, USN, Assistant Judge Advocate, United States Pacific Command, email dated 20 January 2004.

[44] Thomas M. Kane, *Chinese Grand Strategy and Maritime Power*, (London: Frank Cass, 2002), 68.

[45] Lumpkin.

BIBLIOGRAPHY

Astley, John, Commander, USCG, and Lieutenant Colonel Michael N. Schmidt, USAF. "The Law of the Sea and Naval Operations" in *Air Force Law Review*. Vol. 42, No. 119, (1997).

Boczek, Boleslaw Adam. "Peacetime Military Activities in the Exclusive Economic Zone of Third Countries," in *Ocean Development and International Law*, Vol. 19, (1998).

Booth, Ken. *Law, Force and Diplomacy at Sea*. London: George Allen & Unwin, 1985

Department of Defense. DOD Maritime Claims Reference Manual. Washington, D.C.: Department of Defense, Office of the Under Secretary of Defense for Policy Affaris, April 2, 2001.

_____. *National Security and the Convention on the Law of the Sea*. 2d ed. Washington D.C.: Department of Defense, 1996.

Department of State. Publication 112, *Limits in the Seas: United States Responses to Excessive Maritime Claims*. Washington D.C.: Department of State, Bureau of Oceans and International Environmental and Scientific Affairs, 1992.

_____. Publication 117, *Limits in the Seas, Straight Baseline Claim: China*. Washington D.C.: Department of State, Bureau of Oceans and International Environmental and Scientific Affairs, 1996.

Department of the Navy. *The Commander's Handbook on the Law of Naval Operations, Naval Warfare Publication 1.14M*. Washington, D.C.: Naval Warfare Publications Library, 1995.

Doswald-Beck, Lousie, ed. *San Remo Manual on International Law Applicable to Armed Conflicts at Sea*. Cambridge: University Press, 1995.

Galdorisi, George, Captain, USN (ret), and Commander Alan G. Kaufman, JAGC, USN. "Military Activities in the Exclusive Economic Zone: Preventing Uncertainty and Defusing Conflict," in *California Western International Law Journal*, No. 253, Vol. 32, (Spring 2002).

_____, and Kevin R. Vienna. *Beyond the Law of the Sea, New Directions for U.S. Oceans Policy*. Westport: Prager, 1997.

_____. "The United States Freedom of Navigation Program: A Bridge for International Compliance with the 1982 United Nations Convention on the Law of the Sea?" in

Ocean Development and International Law, No. 4, Vol 27, (1996), 399-408.

_____. "Current Development: The United Nations Convention on the Law of the Sea: A National Security Perspective" in *The American Journal of International Law*, No. 208, Vol 89, (1995).

Greenfield, Jeanette. *China's Practice in the Law of the Sea*. Clarendon Press: Oxford, 1992.

Kane, Thomas, M. *Chinese Grand Strategy and Maritime Power*. London: Frank Cass, 2002.

Kenny, Henry J. "The South China Sea: A Dangerous Ground." *Naval War College Review*. No. 3, Vol XLIX, (Summer 1996), 96-108.

Lewis, Margaret K. "Note: An Analysis of State Responsibility for the Chinese-American Airplane Collision Incident" in *New York University Law Review*. Rev. 1404, Vol 77, (November, 2002).

Lowe, A.V. "Some Legal Problems Arising From the Use of the Seas for Military Purposes" in *Marine Policy*, (July 1986).

Meyer, John C., Commander, USN. "The Impact of the Exclusive Economic Zone on Naval Operations," in *Naval Law Review*, No 241, Vol 40, (1992).

Government of the People's Republic Of China. "Chinese Statement Upon Ratification (7 June 1996)," <http://www.un.org/depts/los/convention_agreements/convention_declarations.htm> [16 January 2004].

Roach, J. Ashley, and Robert W. Smith. *United States Responses to Excessive Maritime Claims*. 2d ed. The Hague: Martinus Nijoff Publishers, 1996.

Rose, Stephen A., Captain, JAGC, USN. "Naval Activity in the EEZ – Troubled Waters Ahead?" in *Naval Law Review*, No. 67, vol 19, (1990).

Stephens, Dale G., Lieutenant Commander, RAN. "The Impact of the 1982 Law of the Sea Convention on the Conduct Peacetime Naval/Military Operations" in *California Western International Law Journal*, No. 283, vol 29, (1999).

United Nations. *1982 United Nations Convention on the Law of the Sea*, United Nations Publication, 1261. New York, United Nations, 1982.